

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TRAVELL C. HOLMES,

Plaintiff,

v.

DAVID BAUGHMAN, et al.,

Defendants.

No. 2:20-cv-1496 DAD DB P

ORDER

Plaintiff is a state prisoner proceeding with a civil rights action under 42 U.S.C. § 1983. Plaintiff alleges defendants were deliberately indifferent to his medical needs when they required him to use stairs despite having a “no stairs” chrono and he fell injuring his knee. Before the court are: (1) defendant Soltanian’s motion to compel plaintiff to respond to interrogatories, requests for production of documents, and requests for admissions; and (2) defendant Soltanian’s requests for sanctions. For the reasons set forth below, this court will grant defendant’s motion to compel with respect to the requests for production of documents and reserve ruling on defendant’s motion with respect to the interrogatories and requests for admissions until defendant provides additional information. In addition, this court will deny defendant’s motion for sanctions.

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BACKGROUND

This case is proceeding on plaintiff's first amended complaint. (ECF No. 16.) On screening, this court found plaintiff sufficiently alleged claims that each defendant was deliberately indifferent to plaintiff's serious medical needs in violation of the Eighth Amendment. (See ECF No. 18.)

Plaintiff alleges that in March 2017, he had knee replacement surgery. He was then given a "no stairs" chrono. Nonetheless, he was required to use stairs while at CSP-Sac. At that time, plaintiff used a heavy walker. Navigating the stairs required him to pick up the walker. In July 2017, plaintiff fell down the stairs, injuring his right knee and shoulder.

Plaintiff alleges that each defendant was aware that he had a no stairs chrono but failed to take action to have him moved to a place where he would not be required to use stairs.

Defendants moved to dismiss this action on the grounds that it was filed outside the statute of limitations. (ECF Nos. 35, 38.) This court found plaintiff had adequately alleged that he may be entitled to equitable tolling of the statute based on his loss of legal property, lack of mental capacity, and/or lack of law library access due to prison shutdowns resulting from the COVID-19 pandemic. Because consideration of those issues will require information outside the allegations in the pleadings, this court dismissed defendants' motion without prejudice to its renewal as a motion for summary judgment. (ECF No. 46.)

In response to a subpoena for plaintiff's medical and mental health records, plaintiff filed motions to prevent disclosure of those records. (ECF Nos. 51, 58.) Defendants opposed those motions. In an order filed August 22, 2022, this court granted in part plaintiff's motions. This court held that plaintiff's health records are discoverable because they are relevant to the issue of equitable tolling. Recognizing that those records may contain sensitive information, this court issued a protective order limiting defendants' use of plaintiff's health records. (ECF No. 74.)

MOTION TO COMPEL

Defendant Soltanian moves to compel plaintiff to respond to interrogatories, requests for production of documents, and requests for admissions. (ECF No. 78.) Dr. Soltanian's counsel states that when plaintiff did not provide timely responses, counsel had a telephone conversation

with plaintiff in which plaintiff said he did not feel he was required to respond to discovery absent a court order. (See ECF No. 78-2.)

In response to the motion, plaintiff contends he has not failed to cooperate in discovery but his mental health and living conditions have made it difficult to litigate this case. (ECF No. 81.) Plaintiff attaches a copy of a signed release of his medical records to Dr. Soltanian’s counsel. However, as defendant’s counsel points out, the release is not useful because plaintiff limited it to one day. (See ECF No. 81 at 4-5.) Plaintiff also attaches a copy of his bed assignments from about 2007 through February 2021 (id. at 7-13) and responses to interrogatories (id. at 15-20).

In a reply brief, Dr. Soltanian notes that plaintiff failed to provide responses for, or documents responsive to, the 25 document production requests. Soltanian also complains that plaintiff’s interrogatory responses are unverified and that they “lack substance.” Soltanian then describes the inadequacies of a few responses. (ECF No. 82.)

On December 5, 2022, plaintiff filed a document entitled “Response to Defendant Soltanian’s Request for Admissions.” It appears to be a response to 31 requests for admissions. (ECF No. 84.)

I. Legal Standards for Motion to Compel

Under Rule 37 of the Federal Rules of Civil Procedure, “a party seeking discovery may move for an order compelling an answer, designation, production, or inspection.” Fed. R. Civ. P. 37(a)(3)(B). The court may order a party to provide further responses to an “evasive or incomplete disclosure, answer, or response.” Fed. R. Civ. P. 37(a)(4). “District courts have ‘broad discretion to manage discovery and to control the course of litigation under Federal Rule of Civil Procedure 16.’” Hunt v. County of Orange, 672 F.3d 606, 616 (9th Cir. 2012) (quoting Avila v. Willits Env’tl. Remediation Trust, 633 F.3d 828, 833 (9th Cir. 2011)).

The party moving to compel bears the burden of informing the court (1) which discovery requests are the subject of the motion to compel, (2) which of the responses are disputed, (3) why the party believes the response is deficient, (4) why any objections are not justified, and (5) why the information sought through discovery is relevant to the prosecution of this action. McCoy v.

1 Ramirez, No. 1:13-cv-1808-MJS (PC), 2016 WL 3196738, at *1 (E.D. Cal. June 9, 2016); Ellis v.
2 Cambra, No. 1:02-cv-5646-AWI-SMS PC, 2008 WL 860523, at *4 (E.D. Cal. Mar. 27, 2008).

3 The purpose of discovery is to “remove surprise from trial preparation so the parties can
4 obtain evidence necessary to evaluate and resolve their dispute.” United States v. Chapman
5 Univ., 245 F.R.D. 646, 648 (C.D. Cal. 2007) (quotation and citation omitted). Rule 26(b)(1) of
6 the Federal Rules of Civil Procedure offers guidance on the scope of discovery permitted:

7 Parties may obtain discovery regarding any nonprivileged
8 information that is relevant to any party's claim or defense and
9 proportional to the needs of the case, considering the importance of
10 the issues at stake in the action, the amount in controversy, the
11 parties' relative access to relevant information, the parties' resources,
the importance of the discovery in resolving the issues, and whether
the burden or expense of the proposed discovery outweighs its likely
benefit. Information within this scope of discovery need not be
admissible in evidence to be discoverable.

12 “Relevance for purposes of discovery is defined very broadly.” Garneau v. City of Seattle, 147
13 F.3d 802, 812 (9th Cir. 1998). “The party seeking to compel discovery has the burden of
14 establishing that its request satisfies the relevancy requirements of Rule 26(b)(1). Thereafter, the
15 party opposing discovery has the burden of showing that the discovery should be prohibited, and
16 the burden of clarifying, explaining or supporting its objections.” Bryant v. Ochoa, No. 07cv200
17 JM (PCL), 2009 WL 1390794, at *1 (S.D. Cal. May 14, 2009) (internal citation omitted).

18 **II. Discussion**

19 Plaintiff has waived any objection to discovery by failing to provide timely responses.
20 See Richmark Corp. v. Timber Falling Consultants, 959 F.2d 1468, 1473 (9th Cir.1992) (a party
21 who failed to timely object to interrogatories and document production requests waived any
22 objections). That said, this court will not require plaintiff to respond to discovery that is not
23 relevant to the issues raised by the motion to dismiss or plaintiff's claims.

24 **A. Request for Production of Documents**

25 Defendant alleges that plaintiff has failed to either respond to his request for production of
26 documents or provide any responsive documents. This court has reviewed defendant Soltanian's
27 document production request (ECF No. 78-4). The request seeks documents relevant to this
28 action. Plaintiff appears to have intended to respond to some requests by providing Soltanian

1 with copies of plaintiff's medical records. However, plaintiff made an error in filling out the
2 dates on the form. Plaintiff will be ordered to complete a new waiver form to permit Soltanian's
3 counsel to obtain copies of plaintiff's medical records. Those medical records should provide
4 Soltanian with responses to document production request nos. 4 and 5.

5 Plaintiff must respond to the remaining document production requests. He must copy
6 each request and then write a response. In that response, plaintiff must inform Soltanian whether
7 or not he has documents in his possession or control that are responsive to that request. If
8 plaintiff does have any such documents, he must describe the documents and provide Soltanian
9 with copies of the documents. Plaintiff must then sign the response.

10 **B. Interrogatories**

11 This court has reviewed the interrogatories propounded by Dr. Soltanian and finds that
12 they seek information relevant to this action. (See ECF No. 78-3.) Plaintiff has failed to verify
13 the interrogatory answers as required by Federal Rule of Civil Procedure 33(b)(3). Plaintiff will
14 be ordered to verify his responses when he provides Dr. Soltanian with new responses. Plaintiff
15 is advised that the verification should precede his signature at the end of the interrogatories and
16 should state: "I hereby certify that the foregoing answers are true and correct to the best of my
17 knowledge and belief."

18 Dr. Soltanian states plaintiff's interrogatory responses "lack substance." This is
19 insufficiently specific. Dr. Soltanian must explain the inadequacies in each interrogatory
20 response so that any amended responses ordered by the court address those problems. Dr.
21 Soltanian will be ordered to provide an explanation why each response is inadequate.

22 **C. Request for Admissions**

23 Plaintiff filed a response to Dr. Soltanian's request for admissions. (ECF No. 84.) This
24 court is unable to determine the relevance of defendant's requests because he did not attach a
25 copy of the requests for admissions to his motion. That said, it appears that plaintiff has
26 attempted to respond to the requests. Because that response is late, Dr. Soltanian will be
27 permitted to inform the court if he finds any of the responses inadequate.

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SANCTIONS

Defendant Soltanian asks the court to impose sanctions against plaintiff in the amount of \$687.50 for counsel's charges to litigate the motion to compel. Counsel explains that during a telephone conference with plaintiff regarding the discovery, plaintiff stated that he did not need to respond absent a court order. (ECF No. 78-2.) Plaintiff's refusal to provide responses necessitated this motion.

Plaintiff contends he has not refused to comply with discovery. He argues that he is hampered by his mental health issues and that he lacked full access to his legal documents after his cell flooded and due to a power outage. (ECF No. 81.)

Federal Rule of Civil Procedure 37(d) authorizes the court to issue sanctions when a party fails to serve answers to properly served interrogatories or requests for inspection of documents. Fed. R. Civ. P. 37(d)(1)(A). The court may impose a broad range of sanctions, including "prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters into evidence," "staying further proceedings" until the party has complied with discovery requirements, and "dismissing the action or proceeding in whole or in part." Fed. R. Civ. P. 37(d)(3) (incorporating sanctions from Fed. R. Civ. Proc. 37(b)(2)(A)(i)-(vi)); see also, e.g., Wyle v. R.J. Reynolds Indus., Inc., 709 F.2d 585, 589 (9th Cir. 1983) ("Federal Rule of Civil Procedure 37 authorizes the district court, in its discretion, to impose a wide range of sanctions when a party fails to comply with the rules of discovery." (internal citations omitted)). The court may also order the disobedient party to pay the moving party the cost of making a motion to compel. Fed. R. Civ. P. 37(d)(3).

Plaintiff is proceeding pro se, and this court is mindful of precedent directing lenience in the interpretation of plaintiff's filings. The pleadings of pro se litigants are held to "less stringent standards than formal pleadings drafted by lawyers." Haines v. Kerner, 404 U.S. 519, 520 (1972). Such lenience is important in a civil rights case, where "the court must construe the pleadings liberally and afford the plaintiff the benefit of any doubt." Karim-Panahi v. L.A. Police Dep't, 839 F.2d 621, 623 (9th Cir. 1988); see also Ferdik v. Bonzelet, 963 F.2d 1258, 1261 (9th Cir. 1992) (The rule of liberal construction is "particularly important in civil rights cases.").

1 Nevertheless, while courts construe pleadings liberally in favor of pro se litigants, pro se plaintiffs
2 remain bound by the applicable procedural rules. See Ghazali v. Moran, 46 F.3d 52, 54 (9th Cir.
3 1995). “A party's lack of counsel may be considered in evaluating the willfulness of discovery
4 violations and the failure to obey orders and in weighing the other factors regarding dismissal, but
5 pro se status does not excuse intentional noncompliance with discovery rules and court orders.”
6 Sanchez v. Rodriguez, 298 F.R.D. 460, 470 (C.D. Cal. 2014) (collecting cases).

7 Based on plaintiff's pro se status, his mental health issues, and his recent attempts to
8 provide defendant with some discovery responses, this court will not order sanctions. However,
9 plaintiff is warned that he must fully comply with this court's orders compelling him to provide
10 Dr. Soltanian with further discovery responses. If plaintiff fails to do so, this court may order
11 plaintiff to pay defendant Soltanian for the costs of making the motion to compel.

12 For the foregoing reasons, IT IS HEREBY ORDERED as follows:

13 1. Defendant Soltanian's motion to compel (ECF No. 78) is granted with respect to the
14 requests for production of documents. Within thirty days of the filed date of this order, plaintiff
15 shall provide Soltanian with responses and with all responsive documents to the requests as
16 described above.

17 2. Within fifteen days after he receives plaintiff's response to the request for production
18 of documents, defendant Soltanian shall file a brief explaining any disputes he has with plaintiff's
19 interrogatory answers, responses to the requests for admissions, and responses to the document
20 production requests. If he challenges the responses to the requests for admissions, defendant shall
21 include a copy of those requests.

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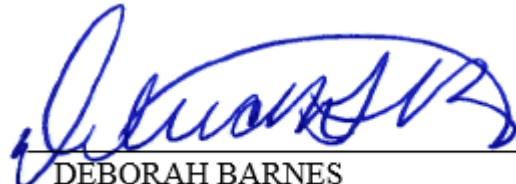
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1 3. After receipt of defendant's brief, this court will consider whether it requires further
2 briefing from plaintiff and, if it does not, will rule on the outstanding issues in defendant
3 Soltanian's motion to compel.

4 4. Defendant Soltanian's request for sanctions (ECF No. 78) is denied.

5 Dated: January 11, 2023

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9 DEBORAH BARNES
10 UNITED STATES MAGISTRATE JUDGE
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